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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on :09.02.2024

Delivered on : 16.02.2024

CORAM:

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

C.R.P(MD)Nos.378 of 2006, 2425, 2426 and 2499 of 2010(NPD)
and
M.P(MD)Nos.1 and 1 of 2010
and
C.M.P(MD)No.3986 of 2006

C.R.P(MD)No.378 of 2006

Sowriar(Died) ... Judgment Debtor/
Petitioner/Defendant

2.Irudhayamary
3.S.Yesu
4.Jenevo
5.S.Arputhasamy
6.S.Anthonisamy
7.S.Arputhasamy
8.Praveena
9.S.Adaikkalaraja
(P2 to P9 are brought on record as LRS of the deceased sole petitioner vide Court Order dated 11.09.2023 made in M.P(MD)Nos.1 to 3 of 2015)

Vs.

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1.Thomas(Died) ... Decree Holder/
1st Respondent/1st Plaintiff

2.Paulraj ... Decree Holder/
2nd Plaintiff/2nd Respondent

3.S.Marirani ...Decree Holder/
3rd Plaintiff/3rd respondent

4.Reetal Mary ...Decree Holder/
4th plaintiff/4th Respondent

5.T.Ellismary ... Decree Holder/
5th Plaintiff/5th Plaintiff

6.Gnanamani ...Decree Holder/
6th Plaintiff/6th Respondent

7.A.Dayalmary ...Decree Holder/
6th Plaintiff/6th respondent

8.Selva Mary
9.Rosy Arockiasamy
10.Vela Amalorpavam
11.Sahaya Jankiresy
12.Devanesam
13.Mary Prinka
(R8 to R13 are brought on record as LRS of the deceased R1 vide Court Order dated 18.11.2010 in M.P(MD)Nos.1to3 of 2010)

Prayer:This Civil Revision Petition is filed under Section 115 of Civil Procedure Code, against the fair and decreetal order dated 24.02.2006 passed by the District Munsif Court, Thiruvaiyaru, in E.A.No.61 of 2005 in E.P.No.6 of 2004 in O.S.No.96 of 1991.

For Petitioners : Mr.P.Vinoth

For R2,R4,R9, R10,R12,R13 : Mr.V.Chandrasekar

For R3,R5toR8 and R11 : No appearance

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COMMON ORDER

C.R.P(MD)No.2425 of 2015 has been filed by the plaintiffs is arising out of the order, dated 04.10.2010, passed in E.A.No.93 of 2010 in E.P.No.6 of 2004 in O.S.No.96 of 1991, by the Executing Court permitting the petitioner to brake open the lock.

2.Similarly, C.R.P(MD)No.2426 of 2015 has been filed by the plaintiffs, is arising out of the order, dated 04.10.2010, in allowing the application to depute the Village Administrative Officer to assist the amin to effect delivery, passed in E.A.No.94 of 2010 in E.P.No.6 of 2004 in O.S.No.96 of 1991 by the District Munsif, Thiruvaiyaru.

3.C.R.P(MD)No2499 of 2010 has been filed by the defendant, is arising out of the order dated 13.08.2010, to reopen the execution petition so as to hear the arguments of judgment debtor, passed in E.A.SR.No.3221 of 2010 in E.P.No.6 of 2004 in O.S.No.96 of 1991 by the District Munsif, Thiruvaiyaru.

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4.C.R.P(MD)No.378 of 2006 has been filed by the defendant is arising out of the dismissal order, dated 24.02.2006 passed by the District Munsif, Thiruvaiyaru, in E.A.No.61 of 2005 in E.P.No.6 of 2004 in O.S.No.96 of 1991, under Section 47 r/w Section 151 C.P.C.

5.The above Civil Revision Petitions were tagged along with the second appeal in S.A(MD)No.910 of 2010. The said second appeal has been filed by the defendants against the concurrent finding given by the trial Court. Wherein the trial Court as well as the first appellate Court have granted the decree of declaration and recovery of possession.

6.Today by a separate order, this Court dismissed the second appeal in S.A(MD)No.910 of 2010, thereby confirming the orders of both the Courts below. To put it in other words, this Court confirms the decree granted to the plaintiffs as prayed for.

7.It appears that the plaintiff has filed an application for execution of the decree, in which, he moved an applications to brake open the lock

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and to depute the Village Administrative Officer to assist the amin to effect delivery, the same were allowed by the Executing Court. Whereas the application filed by the defendant for reopening the execution petition was dismissed. Aggrieved with the said order, the above Civil Revision Petitions have been filed on the sole ground that the second appeal in S.A(MD)No.910 of 2010 is pending. Hence, sought for interference of this Court under the revisional jurisdiction.

8.Today, in view of the order passed by this Court in S.A(MD)No. 910 of 2010 in confirming the decree of the trial Court, this Court could not find any ground to interfere with the order of the Executing Court. Hence, the above Civil Revision Petitions are liable to be dismissed.

9.Coming to the civil revision petition in C.R.P(MD)No.378 of 2006, which was filed against the dismissal order passed in Section 47 r/w Section 151 of C.P.C., application, on the sole ground that Ex.A.3 assignment is nothing, but a fabricated document and that, no such assignment has been given to the plaintiffs' father. When the trial Court

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has given a finding that Ex.A.3 is a valid document, no application could be filed by the parties to the suit, contrary to the findings made in the judgment. Apart from that, the Executing Court has also found that having filed such applications, the petitioner did not come forward to depose before the Executing Court. Further the witness who was examined on behalf of the petitioner also supported the case of the respondent/plaintiff. Hence, taking into consideration of all these aspects, the Executing Court has dismissed the application filed under Section 47 r/w Section 151 of C.P.C. Therefore, this Court could not find any perversity in the conclusion reached by the Executing Court. Hence, this Court do not want to interfere with the well considered order and this civil revision petition is also liable to be dismissed.

10.In the result, all the Civil Revision Petitions are dismissed. No costs. On perusal of the records, the execution petition is of the year 2004 and the execution has been dragged for more than 20 years on various grounds. Therefore, considering the long pendency of the execution petition and also considering the submission that the execution petition is

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pending only to effect of delivery, this Court directs the Executing Court to dispose of the execution petition within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

16.02.2024

NCC:Yes/No
Index:Yes/No
Internet:Yes/No
To
1.The District Munsif Court,
Thiruvaiyaru.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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C.KUMARAPPAN,J.

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